

IN THE MATTER OF	:	BEFORE THE
HIGH'S OF BALTIMORE, INC.	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 06-09C

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DECISION AND ORDER

On May 22, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of High's of Baltimore, Inc., Petitioner, for a conditional use for the expansion and modification of a gasoline service station including a convenience store in a B-2 (Business: General) Zoning District, filed pursuant to Section 131.N.25 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

William E. Erskine, Esquire, represented the Petitioner. Brian Darnell testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The Petitioner is the lessee of a portion of the subject property, known as 13605 Triadelphia Road, which is located in the 5th Election District at the southwest corner of Triadelphia Road and Ten Oaks Road in Glenelg (the “Property”). The Property is referenced on Tax Map 22, Grid 14 as Parcels 59 and 328.

2. The Petitioner leases the northeastern portion of the Property that is rectangular shaped and consists of about 1.09 acres (the “Site”). The Site has about 265 feet of frontage on Triadelphia Road and 182 feet of frontage on Ten Oaks Road. The Property is improved with a 2,000 square foot convenience store situated in the center of the Site which faces east. The Site has one gasoline fuel island with three multi-dispensers and 25 parking spaces. The Site is accessed from two points – one driveway entrance from Triadelphia Road at the northwest corner of the Site, and one from Ten Oaks Road at the southeast corner of the Site.

The Site was approved for a special exception for a gasoline service station under BA Case Nos. 91-50E and 94-39E. The convenience store/service station has been in operation since 1992.

3. Vicinal properties are also zoned B-2 and include:

(a) To the north across Triadelphia Road is Parcel 105, which contains the Ten Oaks Plaza commercial building and the Eyre Bus Company facilities. At the northeast corner of the intersection of Triadelphia Road and Ten Oaks Road is Parcel 55, which is improved with a Royal Farms convenience store and gasoline service station that was approved for a special exception under BA Case No. 96-04E.

(b) To the east across Ten Oaks Road is Parcel 203, which consists of 1.03 acres and is improved with a commercial building.

(c) To the south is Parcel 137, a 2.65-acre property improved with a two-story building used as an automotive repair facility.

(d) To the west is the remainder of Parcel 59, which is improved with a contractor's storage yard.

4. The Petitioner proposes to remove the existing convenience store building and construct a new one in the southern portion of the Site, to face north. The new 2,880 square foot convenience store building will be approximately 67 feet wide and 43 feet deep and will be situated about 17.5 feet from the south Site boundary and 77.5 feet from the west Site boundary. Parking for 23 vehicles will be located in front of and to either side of the convenience store building. Six pump islands, each with a two-hose multi-product dispenser will be located in the northern portion of the Site, to be covered by a 24' by 150' free standing canopy. In addition, a separate 24' by 30' free standing canopy will be located along the west Site boundary; this canopy will cover a diesel and kerosene pump island.

A 10' by 12' concrete dumpster pad with a board-on-board fence enclosure will be located on the southeast side of the convenience store building. To the east of this dumpster pad will be a 15' by 30' loading space. A 1,000 gallon septic tank and the existing underground fuel storage tanks located in the northeast corner of the Site will remain. Stormwater management will be handled off-site. Vehicles will continue to use the existing access points. The Petitioner will provide a Type "E" landscape screen along the Triadelphia Road and Ten Oaks Road frontages and a Type "A" buffer along the south Site boundary. Lighting will be oriented away from vicinal properties and shielded and directed so that it will not shine onto adjacent properties nor cause glare for nearby motorists.

5. The Petitioner proposes that the facility will continue to operate from 5:30 a.m. until 11:00 p.m., seven days and week and will employ two full-time and four part-time employees, with no more than three employees on site at any one time.

6. The 2000 General Plan designates the Property as a “Rural Residential” land use. The Property will be served by private septic facilities and an off-site shared private well. Triadelphia Road is a minor collector with two travel lanes within a 60-foot right-of-way and a 30 mph speed limit. Ten Oaks Road is a major collector with two travel lanes within a 40-foot right-of-way and a 35 mph speed limit. According to the DPZ report, visibility from the access driveway entrances appears to be acceptable. The gross square footage of floor area, parking area, and loading or stacking areas required for the convenience store will be about 7,056 square feet.

7. Mr. Darnell testified that the reconfiguration of the improvements on the Site will improve the traffic flow. He stated that no minor servicing of vehicles will take place nor will there be vending machines on site. The Petitioner proposes to offer a propane cylinder exchange service on the premises (see Exhibit 1), but no propane filling or refilling will occur. The septic reserve and stormwater management facility will be placed on Parcel 59.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B).

A. General Plan. The Howard County General Plan designates the area in which the Property is located as a “Rural Residential” land use. A gasoline service station and convenience store is presumptively considered compatible with rural residential land use. In addition, the 2000 General Plan designates Property for commercial retail use, and the surrounding properties

have been accordingly zoned B-2. The Petitioner's proposed use will be of relatively moderate intensity on a small 1.09-acre site. The Property is located at the intersection of major and minor collector roads. Accordingly, the nature and intensity of operation, the size of the Property in relation to the use, and the location of the Property with respect to streets giving access to the Property are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.a.

B. Adverse Effect: The Petitioner has met its burden in presenting sufficient evidence establishing that this proposed use will not have adverse effects on vicinal properties above and beyond those ordinarily associated with a gasoline service station use in the B-2 district:

1. Physical Conditions. The Petitioner's proposed convenience store with gasoline pumps will not substantially differ from the existing use and will consist of typical activities for these uses. The uses are well separated and buffered from vicinal properties and roadways. Adjoining uses are also commercial in nature. Lighting will be oriented away from vicinal properties and shielded and directed so that it will not shine onto adjacent properties nor cause glare for nearby motorists. Any noise, odor or light generated by the uses will be attenuated by distance and landscaping and will not be greater than that ordinarily associated with a gasoline service station/convenience store use. The use will therefore not generate excessive noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with a gasoline service station in the PEC zoning district, as required by Section 131.B.2.a.

2. Structures and Landscaping. The proposed structure will be moderate in size and height and will be located away from the roadways and vicinal properties. Type "E" landscaping along the road frontages and Type "A" landscaping along the south lot line will adequately

buffer the building. Consequently, the location, nature, and height of structures, walls and fences, and the nature and extent of landscaping on the site are such that the use will not hinder or discourage the use or development of the adjacent land and structures more at the subject site than it would generally elsewhere in the zone, in compliance with Section 131.B.2.b of the Zoning Regulations.

3. Parking and Drives. The required minimum parking spaces for the proposed uses on the Site is 9 spaces; the petition provides for 23 parking spaces, which is more than adequate. The parking areas will be well separated by distance and adequately screened by landscaping from the adjoining roads and neighboring properties. The dumpster will be well separated and screened from vicinal properties. Consequently, parking areas and driveways are properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties as required by Section 131.B.2.c.

4. Safe Access. Two existing access drives will continue to provide access to the proposed facility. The drives have adequate sight distance in both directions. The reconfiguration of the improvements on the site will improve on-site circulation and vehicle access. Consequently, the driveways will provide safe access with adequate sight distance, as required by Section 131.B.2.d.

II. Specific Criteria for Gasoline Service Stations (Section 131.N.25).

1. The proposed facility will be located in a commercially developed area. Although there is an existing gasoline service station with convenience store across the intersection of Triadelphia Road and Ten Oaks Road, there was no evidence of other gasoline service stations in the area. Given the existence of compatible uses in the area, the use will not adversely affect the general welfare or logical development of the neighborhood and will not have a blighting

influence as a result of proliferation of gasoline service stations within the area, in accordance with Section 131.N.25.a.

2. The 1.09-acre Site exceeds the minimum lot size of 20,000 square feet as required by Section 131.N.25.b.

3. The Site has 265 feet of frontage on Triadelphia Road and 182 feet of frontage on Ten Oaks Road, in excess of the minimum of 120 feet of frontage on a public road required by Section 131.N.25.c.

4. The proposed Type “A” and “E” landscaping appears to occupy 20% of the Site area. The Type “E” landscaping along the road frontages will enhance the appearance of the site from public roads and the combined landscaping will provide appropriate buffering for adjacent uses, in accordance with Section 131.N.25.d.

5. The Site does not border a residential district; therefore Section 131.N.25.e does not apply.

6. The proposed dumpster will be enclosed by a board-on-board fence; it will therefore be screened from view as required by Section 131.N.25.f. No vehicle repair operations are proposed.

7. The access driveways and on-site drive aisles are designed and located to ensure safe and efficient movement of traffic and pedestrians as required by Section 131.N.25.g.

8. Operation.

a. Outside operations are limited to the dispensing of gasoline, diesel, and kerosene fuel, in accordance with Section 131.N.25.h(1).

b. No vending machines will be located on the Site; Section 131.N.25.h(2) does not apply.

c. The Petitioner will maintain the premises at all times in a clean and orderly condition including the care and replacement of plant materials required in the landscaping plan, as required by Section 131.N25.h(3).

d. The proposed use is not adjacent to a residential district; therefore, Section 131.N.25.h(4) does not apply.

9. Other Uses.

a. The gross square footage of floor area, parking area, and loading or stacking areas required for the convenience store will be about 7,056 square feet. The 1.09-acre Site therefore exceeds the combined minimum lot size for all of the uses (27,056 square feet), as required by Section 131.N.25.i.(1).

b. The Property is located in a B-2 zone; therefore, Section 131.N.25.i.(2) does not apply.

ORDER

Based upon the foregoing, it is this **30th day of June 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of High's of Baltimore, Inc., for a conditional use for the expansion and modification of a gasoline service station including a convenience store in a B-2 (Business: General) Zoning District, is hereby **GRANTED;**

Provided, however, that the conditional use will apply only to the uses and structures as described in the petition and conditional use plan submitted, as amended herein, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.